IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 16.11.2005

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.K.KRISHNAN

Writ Petition No.284 of 2003

V. Perumal ... Petitioner

vs.

1. The Director General of Police,
Chennai-4.

2. Commissioner of Police,
Chennai-8.

3. Deputy Commissioner of Police,
Chennai-8.

4. Deputy Commissioner,
H.Q. (A.R.) Chennai-2.

5. The Registrar, Tamil Nadu
Administrative Tribunal,
Chennai. ... Respondents

For Petitioner : Mr.Murugesan

For R-2 to R-4 : Mr.E.Sampath Kumar, Govt. Advocate

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Petition under Article 226 of the Constitution of India for the issuance of a writ of certiorari to call for the records in R.A. No.53 of 2002 dated 25.10.2002 against O.A. No.6048 of 1996 passed by the 5th respondent against the order of dismissal in Tha.ko.No.42/PR 1(3)/94-C.P.O. No.161/94 dated 14.1.1995 passed by the 3rd respondent, and to quash the same.

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O R D E R

(Order of the Court was made by P.SATHASIVAM, J.)

. . . . .

Aggrieved by the order of the Tamil Nadu Administrative Tribunal, Chennai, dated 25.10.2002, made in Review Application No.53 of 2002 and O.A. No.6048 of 1996, the petitioner has filed the above Writ Petition to quash both those orders on various grounds.

2. According to the petitioner, he was appointed as Grade-II Police Constable in Armed Reserve, Madras, on 07.02.1973 and promoted as Grade-I Police Constable and posted in the Control Room, Chennai-600 008. On the allegation that on 12.07.1994 at about 7.40 a.m. he quarrelled with the Police Officers under the influence of alcohol, a criminal case was filed against him under Sections 332 and 506(2) of IPC read with Section 4(i)(j) of the Prohibition Act. To the same extent, he quarrelled with the Inspector of Police and two Sub Inspectors, who were present in the room of the Assistant Commissioner. After framing charges, an exparte enquiry was conducted without giving opportunity to him. Based on the enquiry, the third respondent, viz., Deputy Commissioner of Police, Chennai-600008, issued a show case notice which was challenged in O.A.No.12/95 before the Tamil Nadu Administrative Tribunal. On 24.01.1995, the Tribunal passed an order directing the third respondent to appoint a fresh Enquiry Officer. But in the meantime, by order dated 14.01.1995, the third respondent dismissed the petitioner from service. The said dismissal order was challenged in O.A.No.6048/96. In the meanwhile, the Department filed Review Application No.122/95 to review the order passed in O.A.No.12/95. Both O.A.No.6048/96 and R.A.No.122/95 were heard and final order was passed by the Tribunal dismissing O.A.No.6048/96 on merits and R.A.No.122/95 as unnecessary. Thereafter the petitioner filed R.A.No.53/2002 seeking review of the order passed in O.A.No.6048/96. By order dated 25.10.2002, the Tribunal dismissed the said Review Application, hence, the present Writ Petition.

3. Heard learned counsel for the petitioner and learned Government Advocate for respondents 1-4.

4. Mr. Murugesan, learned counsel appearing for the petitioner, after taking us through the enquiry proceedings, order of the Original Authority and the orders of the Tribunal, has raised the following contentions:-

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a. The petitioner was not afforded adequate opportunity to participate in the enquiry. No attempt was made to serve notice at the address given by him.

b. Inasmuch as the Enquiry Officer is related to the complainant, the ultimate report of the Enquiry Officer is liable to be rejected.

c. In any event, the punishment is disproportionate to the charges levelled against him.

5. On the other hand, learned Government Advocate would submit that notice for enquiry was sent to the address given by the petitioner and, in fact, he attended the enquiry on one day and thereafter he abandoned the enquiry. He further contended that the Enquiry Officer has submitted his report after intimating the petitioner at every stage and the contention that the Enquiry Officer is biased is liable to be rejected. He further contended that considering the serious charges levelled against and proved and taking note of the fact that the same was considered by the authority, the punishment imposed cannot be said to be either excessive or unreasonable. He also contended that all these aspects having been considered and rejected by the Tribunal, there is no valid ground for interference.

6. We have carefully considered the rival contentions.

7. Before going into the rival contentions, it is useful to refer the charges levelled against the petitioner. When he came late on 12.07.1994 and the same was questioned, he disobeyed his superior officers and also scolded them in filthy language. Further, when he was asked by another Constable (by name Thangaraj) not to behave in that manner, he pushed him down. He was under the influence of alcohol while he was on duty.

8. Coming to the first contention raised, it is seen that notice for enquiry was sent to the petitioner to the address, namely, No.7, Amsa Garden, 2nd Street, Thiruvottriyur. It is not in dispute that the petitioner resides in the said address. It is the grievance of the petitioner that apart from No.7, the envelope contains New No.8/2 which according to him is not the correct address where he resides. We are unable to accept the said contention. As said earlier, the address given by him to the Department is No.7, Amsa Garden, 2nd Street, Thiruvottriyur. When an attempt was made to serve the notice, the house was found locked, due to which, the person who went to serve the notice pasted the same in the said address. Further, it is seen from the

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materials placed that proceedings No.42/jgp1(3)(94), dated 21.11.1994, was served through a Grade-I Police Constable (his number being 1874) on 22.11.1994. The said notice contains the date of next hearing as 25.11.1994. In spite of the same, he did not appear on 25.11.1994. In order to give one more opportunity, the enquiry was adjourned to 29.11.1994 and thereafter further adjourned to 04.12.1994. In the said intimation, it was specifically informed that if the petitioner fails to appear on the next hearing date, the enquiry would be proceeded without his presence. Inasmuch as on every occasion, the petitioner was not in his house and the door was locked, the intimations were pasted in the house. Further, this aspect was considered by the Tribunal in detail. The discussion of the Tribunal in Paragraph 7 shows that he participated in the enquiry on one day, i.e., on 29.11.1994. When he was aware of the disciplinary enquiry, it is but proper for him to ascertain and if he is really interested in contesting the matter, he could have very well attended the enquiry in the subsequent dates. Fact remains, he did not attend the final enquiry that was held on 04.12.1994, accordingly, the Enquiry Officer proceeded with the enquiry and examined the departmental witnesses in the absence of the applicant / petitioner herein. Thereafter the Enquiry Officer forwarded copies of the deposition of the witnesses recorded in chief examination and requested the petitioner to offer his explanation within seven days. Fact remains, he did not give his explanation and he did not also ask for cross examination of the witnesses. In such circumstances, as rightly observed by the Tribunal, the Enquiry Officer had no other way except to finalise the enquiry and submit the report to the Disciplinary Authority. It is also brought to our notice that the copy of the enquiry report was forwarded to the petitioner, asking his explanation. In such circumstances and in the light of the abundant factual information, we are unable to accept the first contention raised by the learned counsel for the petitioner. On the other hand, we hold that the petitioner was aware of the enquiry proceedings and he did not utilise the opportunities afforded to him by attending the enquiry and putting forth his case.

9. Coming to the second contention namely, the Enquiry Officer is biased since he is related to the complainant, on going through the nature of the charges levelled against the petitioner and the officer who made the complaint and the person who enquired into the matter, we do not find any merit in the said contention.

10. Coming to the last contention, namely, that the punishment is excessive, we have already extracted the charges levelled against the petitioner, which are serious in nature. One of the charges is that he consumed liquor while he was on duty. The other charges relate to insubordination and also threatening

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the higher officials with dire consequences, forgetting that he is a Police Constable working under them. It is also relevant to note that in spite of the opportunity afforded to him, the petitioner did not put forth his case to wriggle out of the charges levelled against him. All these relevant factors have been considered by the Original Authority. Though the order does not refer all the factual details, it cannot be presumed that the Original Authority has not taken note of all these materials. The Tribunal has also concluded that the punishment awarded to him is reasonable and cannot be treated as disproportionate. We agree with the said conclusion.

11. In the light of what is stated above, we do not find any error or infirmity in the orders of the Tribunal for interference. Writ Petition fails and the same is dismissed. No costs.

16.11.2005.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1. The Director General of Police, Chennai-4.

2. The Commissioner of Police, Chennai-8.

3. The Deputy Commissioner of Police, Chennai-8.

4. The Deputy Commissioner, H.Q. (A.R.) Chennai-2.

5. The Registrar, Tamil Nadu Administrative Tribunal, Chennai.

1 cc to Mr.M.V.Venkataseshan and Mr.R.Murugesan, Advocates, SR.45341

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dv/25.11.05

W.P. No.284/2003.

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